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Report to the Chairman, Committee on Government Operations, House of Representatives

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OIL RESERVES

Proposed DOE Legislation for Firearm and Arrest Authority Has Merit

ORIGINAL

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Resources, Community, and
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The Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives

Dear Mr. Chairman:

In your December 3, 1986, letter, and in our subsequent discussions with your office, you requested, among other things, that we review the kinds of security systems in place at the Strategic Petroleum Reserve (SPR), security clearance procedures, and the adequacy of the physical security system. You also requested our comments on legislation proposed by the Department of Energy (DOE) that would grant firearm and arrest authority to SPR security personnel, including suggestions for any other provisions that should be added.

During a briefing we gave your staff on the results of our work, we agreed to provide you with a report on SPR activities, including our views on the adequacy of the SPR's physical security system, and a separate report covering the proposed legislation. Our first report, Oil Reserves: DOE's Management of the Strategic Petroleum Reserve (GAO/RCED-87-171BR), was issued on July 17, 1987. This report comments on the proposed firearm and arrest authority legislation.

In summary, we found that federal arrest and firearm authority would be useful in providing a uniform framework within which guard services for all SPR sites and facilities can be provided. We noted that such authority would

- provide the same arrest authority for guards serving at sites in both Louisiana and Texas,
- allow the security services contractor to move guard personnel among sites with no loss of authority, and
- resolve the question of security guards' personal liability for actions taken in the line of duty.

While we generally support the proposed legislation, we noted that DOE is now using subcontractor personnel to protect SPR facilities and that the proposed legislation may be ambiguous as to whether the Secretary can extend firearm and arrest authority to these subcontractor employees. Consequently, we are recommending that the Secretary of Energy

request the cognizant House committees that will be considering the proposed legislation to revise the bill language to make explicit the right to grant the firearm and arrest authority to subcontractor as well as contractor employees.

Objectives, Scope, and Methodology

In obtaining information for this report, we reviewed DOE's proposed legislation for providing SPR guards with arrest and firearm authority. We discussed the need for the proposed legislation and obtained and reviewed data concerning the SPR's current security program with officials at DOE's headquarters in Washington, D.C.; the Oak Ridge Operations Office in Oak Ridge, Tennessee; and the SPR's Project Management Office in New Orleans, Louisiana. We did not assess the potential threat to the SPR, however, because we could not review and report on classified information relating to the threat issue within the requested time frame.

To assess the proposed legislation's impact on existing agreements between DOE and the agencies it relies on for assistance, we contacted numerous state and local law enforcement agencies in Texas and Louisiana, as well as cognizant officials of Boeing Petroleum Services, Inc., the SPR's management, operations, and maintenance contractor; and Wackenhut Services, Inc., the SPR security contractor.

We discussed the accuracy and reasonableness of the statements in this report with responsible agency officials and have incorporated their views where appropriate. As requested, however, we did not obtain official agency comments.

Background

Section 151 of the Energy Policy and Conservation Act (Public Law 94-163, Dec. 22, 1975), as amended, authorized the creation of the SPR to store up to 1 billion barrels of crude oil for use if an oil supply disruption occurred. To meet the act's goals, DOE established a three-phase plan to develop capacity and store 750 million barrels of oil. Until DOE's fiscal year 1988 budget was submitted to the Congress in January 1987,[1] the 750-million-barrel SPR was expected to be completed in 1992.

[1]DOE's budget proposal (1) provides no funds for developing additional storage space after 581 million barrels are completed near the end of fiscal year 1987 and (2) limits future oil purchases to 35,000 barrels per day. This proposal extends the SPR completion beyond the year 2000.

DOE initially acquired and modified for oil storage use existing caverns in salt deposits at Bryan Mound, Texas; Bayou Choctaw, Sulphur Mines, and West Hackberry, Louisiana; and a salt mine at Weeks Island, Louisiana. DOE subsequently developed additional storage capacity at these sites and constructed a new site at Big Hill, Texas, and a marine terminal at St. James, Louisiana.

The six SPR storage sites are currently connected by pipeline to the federally owned St. James terminal and two commercial marine terminal complexes for crude oil deliveries during site development and for oil distribution. DOE has recently added a third commercial terminal and plans to add access to at least two more terminals to supplement the capability of the initial three marine terminals to distribute oil during a supply disruption.

The SPR currently contains about 526 million barrels of oil purchased at a cost of about $15 billion. The site facilities and pipelines cost an additional $2.5 billion. The multiple oil storage sites and terminal facilities are geographically dispersed over a wide area in Louisiana and Texas; most of them are in remote locations. Oil-filled pipelines, some of them over 40 miles in length, connect the storage sites with the various marine terminals.

DOE's SPR Program Office in Washington, D.C., its Oak Ridge Operations Office, and its New Orleans Project Management Office share overall planning and management responsibility for the SPR. DOE's Office of Safeguards and Security develops the policies used by the SPR staff in developing appropriate security plans. Boeing Petroleum Services, Inc. (BPS), is responsible for the day-to-day operational management, including most phases of SPR security. BPS has subcontracted with Wackenhut Services, Inc., to provide security guard services for the SPR sites. Wackenhut is responsible for providing the necessary staff and expertise for the effective and timely accomplishment of the security requirements.

DOE Has Proposed Arrest and Firearm Authority Legislation

DOE has proposed legislation that would add a new section to the Department of Energy Organization Act (42 U.S.C. Sec. 7101-7352). The proposed section would authorize the Secretary of Energy to arm SPR guards while they are protecting the oil storage and related facilities. It would also authorize the guards to make arrests without warrant for a federal offense committed in their presence or if they have reasonable grounds to believe that the person to be arrested has (1) committed or is

committing a felony and (2) is in or is fleeing from the immediate area of the felony.

The proposed legislation would also make trespass on SPR sites designated by the Secretary a federal crime. According to DOE, there is no federal law of general applicability concerning trespass on federal property. The trespass provision in the proposed SPR legislation is modeled after the applicable law regarding DOE nuclear facilities, which makes trespassing on the facilities a federal offense. The proposed legislation would authorize DOE to limit entry onto the SPR sites, the storage or related facilities, or real property. Penalty provisions in the proposed legislation establish a fine of not more than $5,000, imprisonment for not more than 1 year, or both, as the punishment for violators of the trespass provision.

According to DOE, the authority being sought for the SPR is similar to the specific authority already vested in guards at DOE nuclear facilities and the authority vested in personnel of several other agencies, including Secret Service inspectors and agents, postal inspectors, U.S. Marshals, and General Services Administration special policemen. The authority sought by DOE for the SPR could be granted to contractor personnel as well as DOE employees, as is the case for DOE nuclear facilities.[2]

Current SPR Security System

DOE has developed a three-part protection strategy for the SPR. The BPS contract force of approximately 267 Wackenhut guards is the core of the system. While BPS and Wackenhut have accepted the responsibility for SPR security, neither they nor SPR Security believe that they have the authority needed to effectively carry out their mission. Considerable reliance is placed on local and state law enforcement agencies to assist in meeting security needs.

SPR Protection Strategy

The primary mission of the SPR security program is to ensure that the SPR system is capable of providing crude oil, when called upon, at or near established drawdown rates. Currently, the SPR's security strategy is to accomplish this mission by a combination of a physical security system, a contracted security guard force, and a recoverability program.

[2]The Senate approved DOE's proposed legislation on June 25, 1987. It was referred to the House of Representatives for consideration on June 29, 1987.

The physical security system is designed to deter or detect intrusions onto SPR sites, thereby preventing acts of theft, arson, sabotage, or other attempts to destroy SPR property or facilities. Components of the system at the SPR sites include a perimeter fence to control access; a main gate guard station designed to function as a security operations center, which has a geographic alarm display map and video monitors for closed circuit television; and fencing around each main and remote area facility at each site to form protected areas with a secondary intrusion detection system and a closed circuit television assessment system for the remote areas. Currently, the physical security system is in place at all sites except Big Hill. DOE has spent about $13 million for the in-place system and estimates that construction costs for the Big Hill system will be approximately $6.5 million.

The security guard service provided to DOE under the Wackenhut subcontract supplements the physical security system with an active presence at each site. Maintaining 24-hour, 7-days per week coverage of most locations at the sites, the guards (1) control access to each site, conduct roving patrols of the sites' perimeters, and respond to physical security alarms; (2) conduct property searches and inspections of facilities, personnel, and vehicles; and (3) provide protection for classified and unclassified documents and other government property and facilities. The guard service also provides a Special Response Team capable of responding to emergency security situations, such as attempted or actual destruction of facilities, theft, or sabotage of SPR resources.

Some of the facilities, such as the SPR off-site pipelines and associated valves and raw water supply structures, are not located within or protected by the site perimeter security system described previously. In DOE's view, it would be less costly to replace, rather than protect, these exposed facilities. Accordingly, DOE has developed a recoverability program under which BPS has negotiated time and material contracts with local companies for emergency repairs of off-site pipelines and valves and plans to maintain an emergency parts inventory at the storage sites.

Authority for SPR Guards Is Not Uniform

Although BPS and Wackenhut are responsible for protecting nearly $18 billion in government assets, they have no federal authority for carrying out this responsibility. According to BPS and Wackenhut officials, the limited authority they do have is granted by Louisiana and Texas or by local law enforcement agencies. Wackenhut's authority to arm its guards, for example, is provided through its charters from the two states to conduct a protective security business. As explained to us by a

Wackenhut official, however, the charters provide the guards only with the right to wear or carry the firearm, not to use it. Use of a firearm by a security guard is governed by the same rights that a private citizen in the state would have, such as self-protection in face of actual or perceived personal danger from another party. Any liability resulting from the use of the firearm is the responsibility of each individual guard.

Wackenhut's charters to operate a security business do not provide its guards with any arrest authority. As a consequence, a guard has only the same authority to detain or arrest someone as a private citizen has, unless Wackenhut can secure commissions from state or local law enforcement agencies that provide such arrest authority. In Texas, the citizen arrest authority allows the SPR guards to detain or arrest individuals for offenses against both the public peace (misdemeanors) and felonies. In Louisiana, however, citizen arrests can be made only for felonies. As a result, the SPR guards at sites in that state have no authority to even detain individuals for the more common occurrences, such as trespassing and other misdemeanors. Even if Louisiana granted the same citizens' rights as those in Texas, Wackenhut and BPS officials pointed out that any guard exercising the citizen arrest authority in carrying out his or her duty is totally liable for any claims of misuse of that authority. As a result, guards are reluctant to make a citizen's arrest even though it is authorized.

SPR guards can be granted commissions by state or local law enforcement agencies or officials that provide the guards with the same authority as state and local law enforcement officers to carry firearms, detain individuals if unauthorized activities are suspected, and make arrests at SPR sites and facilities. For guards with these commissions, liability for their actions taken in the line of duty is assumed by Wackenhut. These commissions are issued at the discretion of the state or local official in charge of the granting organization and can be revoked at any time. When the Wells Fargo Guard Service Co., for example had the security contract with DOE, most of its guards had state or local commissions. When the contract was terminated on September 30, 1986, the commissions were all revoked, and Wackenhut has had to reapply to have them reinstated.

At the present time, only 35 of the 267 guards have such commissions. In Louisiana, Sulphur Mines is the only SPR site where local commissions have been granted to most of its guards—23 out of 29. Bayou Choctaw has three local commissions and the West Hackberry site has five. All of the remaining guards at these three sites, and guards at the St. James

terminal, Weeks Island site, and the Project Office in New Orleans, have only citizen's arrest authority. In Texas, the state has granted one peace officer commission to the Big Hill site, and three guards at the Bryan Mound site have commissions from two nearby communities.

Relationship With Law Enforcement and Other Agencies

An integral part of DOE's security plan for protecting SPR facilities is the development of a close working relationship with state and local law enforcement agencies, such as the state highway patrol and local sheriffs. DOE has memorandums of understanding with these state and local organizations and with federal law enforcement and military agencies to provide protective assistance to the guard force under emergency conditions where SPR sites are threatened by an attacking force. Personnel from these agencies also participate with DOE and its contractor in on-site training exercises.

Rationale Cited for Requested Legislative Authority

DOE, BPS, and Wackenhut officials believe that federal arrest and firearm authority would enhance the protection of SPR resources and facilities against potentially malevolent acts committed by terrorists or others. These officials recognize that guards can be armed under state charters and that, in many cases, the authority to make arrests is available at the sites through citizen arrests or local commissions. However, the officials pointed out several reasons why they believe the guard force would likely do a better job of securing the SPR under federal authority than they are doing now.

The major benefit to be derived from the legislation would probably be the uniform applicability of the arrest authority at all SPR sites and facilities. This would relieve Wackenhut of having to petition each jurisdiction for guard commissions and operate under the uncertain tenure of the commissions granted. This uniformity would allow Wackenhut to move its guards among the SPR sites with no loss of authority. Under the commission system, guards granted state commissions can be moved among sites in either Louisiana or Texas with no loss of authority, but not across state lines. Local commissions are more restrictive in that they apply only to specific sites and, in most cases, are granted to individual guards at that site. Guards transferred from Sulphur Mines to the Weeks Island site, for example, would lose their commission authority.

Another benefit is the change in liability for actions taken by the guards. As we pointed out earlier, guards are fully responsible for actions taken under citizen's arrest and Wackenhut's current firearms

authority. Susceptibility to legal actions under this condition is viewed by SPR officials as inhibiting guard reactions to situations where the need to exercise their authority in the line of duty is not clear. Guards with state and local commission authority would be much less likely to encounter claims of inappropriate use of that authority, and any liability would be covered by Wackenhut or DOE. However, the number of commissions is limited. The authority requested in the proposed legislation would add the backing of the federal government to guards exercising such authority in their line of duty. SPR guards could also use the threat of federal prosecution when confronting or apprehending intruders onto SPR facilities.

Overall, the officials believe that the guards would have more confidence in their ability to perform their duties and would be more aggressive, under federal authority, in their response to security violations, thereby increasing their effectiveness.

Lack of Arrest Authority Has Generally Not Adversely Affected SPR Security

BPS and Wackenhut officials believe that the lack of federal arrest authority inhibits the guards' reaction to threats to SPR facilities, but there have been no reports of significant security incidents to test this position. During the period from April 1985 through February 1987, BPS investigated about 80 security-related incidents reported at SPR sites. Pursuant to DOE orders and SPR procedures, BPS is responsible for reporting any significant security incidents to DOE. The BPS investigation led to the conclusion that no incidents were significant enough to report. We noted one incident, however, where lack of arrest authority deterred guards confronting trespassers at the St. James terminal.

We reviewed 30 of the incidents investigated by BPS. According to one report, two unauthorized individuals entered the St. James terminal dock from an adjacent dock area. The security guard confronted them and informed them that they were on government property and were under detention. The detention notice was repeated after three other guards arrived, including the shift supervisor and site security manager. The intruders refused to be detained and left the St. James dock. The site security administrator subsequently reported that he believed the guards acted properly since they had no arrest authority and current procedures preclude detention by force if no felony has occurred.

Law Enforcement Officials' Views on the Proposed Legislation

State and local law enforcement officials that are involved with DOE in SPR site assistance matters generally saw no negative effects on their continued involvement or on their agreements to assist DOE if arrest authority is granted. In only one instance was there a negative reaction at the local level to granting such authority. This was based on the perception that the guards were inadequately trained. Each official contacted, however, emphasized the need to keep the federal authority restricted to the SPR sites and facilities.

GAO's View on Arrest and Firearms Authority Provision

Based on our review of the current security situation at SPR sites and DOE's proposed legislation, we believe that the legislation has merit and would enhance current SPR site security. However, we believe DOE should make the proposed legislation more explicit in terms of on whom the Secretary can confer firearms and arrest authority.

Under the proposed legislation, firearm and arrest authority could be granted to contractor personnel as well as DOE employees. DOE points out that this is similar to the specific authority already vested in protective force personnel at nuclear facilities under the Atomic Energy Act. The authority contained in the proposed legislation, however, is not as broad as the coverage currently contained in the Atomic Energy Act and may not be broad enough to cover the security situation at the SPR. In November 1986, the Atomic Energy Act was amended to explicitly authorize DOE subcontractors responsible for guarding nuclear facilities to carry firearms and make arrests. According to a DOE attorney, this was done to cover nuclear installations that were being protected by subcontractor, rather than prime contractor, personnel. It is our understanding that DOE considers its proposed SPR legislation to include both contractor and subcontractor personnel. We believe, however, that it would be a better approach if subcontractors were explicitly identified in the legislation to avoid any misunderstanding.

Recommendation to the Secretary of Energy

We recommend that the Secretary of Energy request the cognizant House committees to revise the proposed legislation to make explicit the right to grant firearm and arrest authority to SPR subcontractor as well as DOE and contractor personnel.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of the report until 30 days from

the date of this letter. At that time, we will send copies to the Secretary of Energy and interested congressional committees. We will also make copies available to others upon request.

This work was performed under the direction of Flora H. Milans, Associate Director. Other major contributors are listed in appendix I.

Sincerely yours,

J. Dexter Peach
Assistant Comptroller General

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